

upon by the Examiner, such that those portions of the deCharms disclosure do, in fact, have the benefit of the January 30, 2001 filing date. For the purpose of the present response, however, Applicant will assume (subject to later confirmation, if necessary) that the portions of the deCharms disclosure relied upon by the Examiner are entitled to the benefit of the January 30, 2001 filing date.

Submitted herewith is the Declaration under 37 C.F.R. §1.131 of the inventor, Oliver Schreck, which establishes a date of invention in Germany (a WTO member country) of the subject matter claimed in the present application at least as early as June 29, 2000, the date on which the invention report was witnessed by Mr. Schreck's Supervisor. Since this date of invention predates the earliest effective date for prior art purposes of the deCharms reference, the deCharms published application is not available as prior art against the subject matter of the present application.

This is sufficient to overcome the rejection based on the deCharms reference alone under 35 U.S.C. §102(e).

As to the rejection under 35 U.S.C. §103(a) as being unpatentable over Jesmanowicz et al in view of deCharms, the Examiner in substantiating that rejection acknowledged that the Jesmanowicz et al reference does not disclose certain features of independent claim 1, and relied on the deCharms as disclosing those features. In view of the unavailability of the deCharms reference as prior art against the subject matter of the present application, the aforementioned rejection cannot be maintained based on the Jesmanowicz et al reference alone.

All claims of the application are therefore submitted to be in condition for allowance, and early reconsideration of the application is respectfully requested.

Submitted by,

Steven H. Noel (Reg. 28,982)

Schiff, Hardin LLP
CUSTOMER NO. 26574
Patent Department
6600 Sears Tower
233 South Wacker Drive
Chicago, Illinois 60606
Telephone: 312/258-5790
Attorneys for Applicant

CH1\ 4676675.1